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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 70

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

Petitioner,

v.

JOHN LISI, etc., *et al.*,

Respondents.

MOTION OF BATES BLOCK FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

LEE S. KREINDLER,
Of Kreindler & Kreindler,
Counsel for Applicant,
Bates Block, as Executor of the Estate of Charles Baxter Jones, Jr. and as Guardian and Next Friend of three minor children of Charles Baxter Jones, Jr. and Julia Lowry Block Jones, deceased.
Office and P. O. Address,
99 Park Avenue,
New York, New York 10016.

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Bates Block, as Executor of the Estate of Charles Baxter Jones, Jr., and as Guardian and Next Friend of three minor children of Charles Baxter Jones, Jr., and Julia Lowry Block Jones, deceased, respectfully moves this Court for leave to file a brief in this case as *amicus curiae*. The attorney for the petitioner herein, Austin P. Magner of the firm of Condon & Forsyth, 1 Rockefeller Plaza, New York, New York, has refused to consent to applicant's filing of such brief as *amicus curiae*. The attorney for the respondents, Theodore E. Wolcott, of 36 West 44th Street, New York, New York, has also refused to consent to the filing of such brief as *amicus curiae*. Accordingly, leave of this Court is sought under Rule 42 of this Court's Revised Rules.

The applicant has an interest in this case in that he now has pending an action for the wrongful deaths of his two decedents in the United States District Court for

the Northern District of Georgia, Atlanta Division (Civil Action Nos. 8266, *et al.*) entitled "Bates Block, et al., v. Compagnie Nationale Air France", in which one of the issues involved is the same as that presented for decision in the instant case, viz., did the airline ticket "delivered" to the passenger provide adequate notice of the limitation of damages contained in Article 22 of the Warsaw Convention (49 Stat. 3000-3026), to permit the airline to take advantage of said limitation?

The *Block* action, involving two deaths resulting from the crash of an Air France Boeing 707 jet at Orly Field, Paris, France, is one of 45 actions consolidated for trial and currently pending in said Federal Court in Georgia. The decedents were members of the Atlanta Art Association which had arranged the charter flight with Air France. The Fifth Circuit recently affirmed the trial court's decision denying applicant's motion to strike the Warsaw Convention as a defense. *Block* v. *Compagnie Nationale Air France,* —— F. 2d ——, 10 Avi. 17, 518 (5th Cir. Nov. 8, 1967). Plaintiffs had argued that the Warsaw Convention, by its language and history, did not apply to charter flights. In denying plaintiffs' motion which sought to strike the defense based on the Warsaw Convention the District Court stated that tickets were delivered to the passengers three weeks prior to the departure of the flight. These tickets allegedly "delivered" to Mr. Block's decedents were identical (with respect to the issue at bar) in language, size of type, and legibility, to the Alitalia ticket currently before this Court. The question of the adequacy of the notice contained in the ticket was not considered by the Fifth Circuit, but this issue will be raised at the trial of the *Block* action.

Applicant's counsel, Lee S. Kreindler, and his firm, Kreindler & Kreindler, represent the estates of sixty-two passengers (including Mr. Block's decedents) who died in the Air France accident. Furthermore, applicant's counsel's firm represents many other airline passengers in cases

pending in both State and Federal Courts in which the Warsaw Convention is involved.

Applicant Block respectfully submits that the legislative history of the Warsaw Convention, as well as the issue of the equivocal nature of the language of the ticket (as opposed to its type size) were not presented by respondent in adequate detail in the brief filed with the Court of Appeals for the Second Circuit. The applicant, desiring to develop these areas fully, does not believe that they will be sufficiently elaborated for this Court's consideration by the present parties.

Leave to file briefs as *amicus curiae* has been granted by this Court to the International Air Transport Association, the Air Transport Association of America, and the Republic of Italy, all of whom support the petitioner's position. Only one individual, Arnold Holtzman, has been granted leave to file a brief *amicus curiae* in support of the respondent's position.

The effect of this Court's determination in the instant case upon the air travelling public will be both far reaching and vital. It is believed that the arguments which applicant desires to make will aid the Court in reaching a decision, and if they are adopted, the results below will be affirmed.

Respectfully submitted,

LEE S. KREINDLER,
Of Kreindler & Kreindler,
Counsel for Applicant,
Bates Block, as Executor of the Estate of Charles Baxter Jones, Jr. and as Guardian and Next Friend of three minor children of Charles Baxter Jones, Jr. and Julia Lowry Block Jones, deceased.
Office and P. O. Address,
99 Park Avenue,
New York, New York 10016.

Certificate.

This is to certify that on the 2nd day of January, 1968, copies of the above application to appear as *amicus curiae* have been forwarded to Messrs. Condon & Forsyth, 1 Rockefeller Plaza, New York, New York 10020, attorneys for petitioner Alitalia-Linee Aeree Italiane, S.p.A., and Theodore E. Wolcott, Esq., 36 West 44th Street, New York, New York 10036, attorney for respondents John Lisi, *et al.*

Lee S. Kreindler